IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : February 21, 2007

Teja Ram alias Tejua versus State of Punjab

Coram: Hon'ble Mr. Justice Virender Singh

Present: Ms. Vandana Malhotra, Advocate for the appellant
Mr. B.S.Sewak, Deputy Advocate General, Punjab

Virender Singh, J.

At the very outset, it is worth mentioning here that the appellant stands convicted in another case bearing FIR No. 48 dated 11.8.93 under section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'the Act') registered at Police Station Phul (Distt. Bathinda) where the present case was also registered. In the aforesaid case, the allegations against the appellant was that he was found in conscious possession 8.5 kgs of opium. He preferred a separate appeal against the aforesaid conviction in this Court which was registered as Criminal Appeal No. 961-SB of 2000. The same was heard by me on 31.1.2007. The present appeal could not be heard on the said date as the trial court records

were not received from the concerned quarters. It was, therefore, adjourned for 7.2.2007 on which date the final arguments were heard and the judgment was reserved. The aforesaid appeal (Criminal Appeal No. 961-SB of 2000) already stands dismissed by me vide judgment dated 9.2.2007.

In brief, the prosecution case set up against the appellant is that on 16.8.1993, he was taken out from the police lock up for the purpose of interrogation by SI Harpal Singh, the then SHO of Police Station Phul as the appellant was already arrested in another case bearing FIR No. 48 dated 1.8.1993 registered against him under section 18 of the Act in the same Police Station for allegedly keeping in possession 8.5 kgs of opium. During interrogation, he suffered a disclosure statement (Ex. PE) to the effect that he had kept concealed some opium in the trolley brought and smuggled from the Rajasthan side. The said trolley was lying parked in grove of trees standing in the area of village Sailbrah and that sale proceeds of the said opium amounting to Rs 87,150/- were kept in a plastic gatta (bag) along with a pair of scales and weight. The concealed place was only known to him and he could get the same recovered. The aforesaid disclosure statement was reduced into writing and pursuant to which the appellant led the police party to the disclosed place. In the meantime, Sukhdev Singh the then DSP Phul was also requested to reach the spot. In his presence, the appellant led the police party at a particular point and after digging out the

land got produced from under neath the land a small gunny bag containing opium in a glazed paper weighing 7 kgs. Small pair of scales, three different weights and cash of Rs 87,150/- smeared with opium, as sale proceeds of the sold opium were also recovered. 10 grams opium was extracted as representative sample and sealed in separate parcel with the seal bearing impression 'HPS'. The residue opium was also converted into sealed parcel. The small pair of scales and cash was also taken into possession vide recovery memo. The trolley was also got produced by the appellant pursuant to his statement from a grove of trees and the same was also taken into possession vide separate memo. The seal impression chit was also prepared and thereafter the appellant was formally arrested. Ruqa was sent to the Police Station on the basis of which formal FIR was recorded under section 18 of the Act. Rough site plan was prepared at the spot and special report was also sent under section 57 of the Act. The appellant along with the case property was then taken to the Police Station and were produced before the learned Sub Divisional Judicial Magistrate, Phul. A formal application was moved in this regard on which an order was passed. The case property was then deposited in the Judicial Malkhana. After the receipt of the report of the Chemical Examiner which declared the sample to be of opium, the necessary investigation was completed and the challan was filed against the appellant and thereafter the appellant was charged under section 18 of the Act.

In order to substantiate the charge, the prosecution examined PW1 Sukhdev Singh S.P. (earlier S.I.), who had attested the recovery memo Ex. PA, Ex. PB, vide which the opium parcel Ex. P1 along with the pair of scales, weights and a cash of Rs 87,150/- as well as the trolley were recovered from the appellant and were taken into possession. PW2 Jagsir Singh ASI, on 17.8.1993 had produced the appellant as well as the case property including the opium parcel Ex. P1 and the sample before the learned Sub Divisional Judicial Magistrate, Phul, vide formal application. Onkar Singh SI (PW3) is the attesting witness to the disclosure statement Ex. PE and recovery memos Ex. PA and Ex. PB. Recovery was effected in his presence. PW4 Constable Kamaljit Singh and PW5 HC Narbir Singh, had furnished on record their respective affidavits. PW6 SI Harinderpal Singh, is the Investigating Officer of this case. Ex. PL the report of Chemical Examiner, Patiala, was also tendered into evidence.

The stand taken by the appellant as emerges from his statement recorded under section 313 Cr.P.C. was of total denial stating that nothing was recovered from him. In fact he was picked up from Rampura where he had sold some buffaloes and at that time he was having an amount of Rs one lac with him. The police wanted to grab his money and he was ultimately implicated in this case along with one Ujjagar Singh who was acquitted. The appellant, however, had not led any evidence in defence.

After appreciating the entire evidence, the appellant now stands convicted and sentenced as indicated above. Hence this appeal.

The present appeal has been argued by Ms. Vandana Malhotra, Advocate who has been appointed by Punjab Legal Services Authority, being on its panel. State of Punjab is being represented by Mr. BS Sewak, learned Deputy Advocate General. With their assistance, I have also gone through the entire records minutely.

At the very outset Ms. Malhotra contends that there is non compliance of the provisions of section 50 of the Act and the appellant deserves acquittal on this flaw alone.

I do not find any force in the said argument for a very simple reason that the recovery allegedly effected in this case was not from a person and, therefore, section 50 was not attracted. Reference in this regard can be made to a latest judgment of Hon'ble Apex Court rendered in **State of Himachal Pradesh vs Pawan Kumar,** 2005(2) All India Criminal Law Reporter, 653.

Ms. Malhotra then submits that, in fact, the appellant has been falsely implicated in this case by the prosecution to show heavy recovery. Another case bearing FIR No. 48 was also registered against him on 11.8.1993 in which the prosecution had shown the recovery of 8.5 kgs of opium and the present recovery is shown after the lapse of five days during the police remand. According to the learned counsel this creates doubt

about the recording of the so called disclosure statement at the instance of the appellant.

I am not convinced even with this limb of argument. The appellant belongs to another State (Rajasthan). The arrest of the appellant in another case (FIR No. 48 dated 11.8.1993) is entirely on different grounds. He was found carrying small gunny bags on his head which ultimately on search was containing the opium (8.5 kgs). During the police remand he suffered disclosure statement about concealing of another bulk of opium (7 kgs) which was recovered in the present case. Not only this, a sum of Rs 87,150/- was also recovered pursuant to his disclosure statement. Recovery of huge amount of money cannot be planted like this. All these facts go to show that the investigation conducted in this case is very fair and aforesaid disclosure statement is not a manufactured piece of evidence just in order to register another case of almost the same quantity of the contraband.

The learned counsel then submits that the prosecution is not free from doubt as the investigating officer has not joined any independent witness whereas he had ample time to join any person from nearby place.

The aforesaid argument does not appeal. The recovery was effected in the presence of DSP who was also called at the spot. He is an attesting witness to the recovery memos. Simply that no independent witness was called at the spot would not be a ground to dislodge the case of

the prosecution, that too in a case of heavy recovery effected from a person who had entered in Punjab State from another State (Rajasthan). No animosity has been projected by the appellant in this case. The plea taken by him is that he had come to Punjab to sell buffalo and on an altercation ensued between him and the police he was falsely implicated in this case and his money was also kept by the police is neither here nor there. In my view, the defence stands on a very tenuous thread. Had the police kept the entire money of the appellant on account of some altercation, recovery of Rs 87,150/- would not have been shown by the Investigating Officer. This material fact by itself demolishes the defence set up by the appellant.

Ms. Malhotra lastly contends that the case of the prosecution fails on link evidence. In this regard, my attention has been drawn to the statement of the official witnesses.

I do not find any force in the aforesaid argument as well for a very simple reason that the entire case property was produced before the Ilaqa Magistrate on the following day of the alleged recovery, as is clear from the formal application. I have also seen the affidavit of the official witness with regard to the link evidence and find no infirmity in the same. Certain in-significant discrepancies in the statement of official witness on the aspect of link evidence have to be ignored. I, however, do not find any basic weakness in their statements which would touch the core of the case so as to disbelieve the prosecution case in its entirety.

No other point has been left untouched by me.

In view of the aforesaid discussion it can safely be concluded that the prosecution has been able to prove the conscious possession of the appellant qua the contraband (7 kgs) of opium recovered pursuant to his disclosure statement beyond any shadow of reasonable doubt. Resultantly, his conviction and sentence as recorded by the learned trial court under section 18 of the Act deserves to be affirmed. Ordered accordingly.

The instant appeal, thus, stands dismissed.

The appellant is stated to be in custody since the date of his arrest. He shall serve his remaining substantive sentence.

The entire case property which includes cash amounting to Rs 87,150/- shall stand confiscated to the State.

(Virender Singh)
Judge

February 21, 2007
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